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BEFORE THE FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the matter of)
Request for Waiver and/or Appeal by)
Zapata County Independent School District)
Zapata, Texas)
Schools and Libraries Universal Service) CC Docket 96-45
Support Mechanism) CC Docket No. 02-06
Attention: Ms. Gina Spade, Deputy Division Chief)
)

**REQUEST FOR REVIEW OF DECISION OF THE UNIVERSAL SERVICE
ADMINISTRATION COMPANY, SCHOOLS AND LIBRARIES DIVISION BY
ZAPATA COUNTY INDEPENDENT SCHOOL DISTRICT, OR IN
THE ALTERNATIVE, REQUEST FOR A WAIVER OF SECTION 54.404(a)
OF THE COMMISSION'S RULES**

Funding Year 2006 (July 1, 2006 to June 30, 2007)
Billed Entity Name: Zapata County Independent School District
Billed Entity No.: 141503
Billed Entity FCC Registration No.: 0012731899
Form 471 No.: 531511
Funding Request Number: 1517632 *51468705*

I. Introduction and Summary

Zapata County Independent School District ("Zapata CISD"), and in accordance with Sections 54.719(c) and 54.722 of the Commission's Rules, appeals a decision of the Universal Service Administrative Company ("USAC"), Schools and Libraries Division (the "SLD"). Specifically, Zapata CISD appeals or alternatively, requests a waiver of the USAC decision issued January 05, 2011, (EXHIBIT A) in which it affirmed a previous determination that the district's Form 471 filed with respect to its procurement of services did not comply with state and/or local competitive bidding guidelines and did not get board approval for the Internal Connections services, therefore, should not have been funded.

The undersigned is the Chief Financial Officer ("CFO") for Zapata County Independent School District ("Zapata CISD") located at 17th and Carla, Zapata, Texas 78076, a Texas school district which is an applicant under the Universal Service Support Mechanism ("E-Rate Program" or

“Program”) for the Schools and Libraries Division Support Mechanism (“SLD”), commonly known as the E-Rate program. This request comes before the Commission in a timely manner from the Administrator decision letter.

“After a thorough investigation, it has been determined that this funding commitment must be rescinded in full. During the course of the audit it was determined that the applicant failed to comply with the FCCs competitive bidding requirements. The applicant did not advertise in the local paper when and where submitted bids would be received and opened. Nor did the applicant get board approval for the Internal Connections services. According to the FCCs competitive bidding requirements, Applicants are required to follow state and local procurement requirements. Since the Applicant failed to comply with the procurement requirements, the commitment has been rescinded in full and USAC will seek recovery of any disbursed funds from the Applicant.”

During an attestation audit conducted in April, 2009 (Exhibit B), Ernst & Young found that Zapata CISD did not publish their notice of intent to purchase in the local newspaper. Zapata CISD respectfully submits that because of special circumstances, the newspaper advertisement was not placed in the local newspaper. Zapata County is a very small town with a population of 5,390 according to the July 2007 statistical publication with a newspaper circulation that is also very small. Two dominant special circumstances occurred that led this oversight of publishing in the local newspaper: 1) during this filing process, the district Coordinator of Technology, Mr. Gilbert Flores, was on active duty in Iraq for his second tour of duty. This made the application process impossible for the district to handle so they contracted with an outside consulting service to handle all of the E-Rate processes which led to 2) the second special circumstance: someone that was not familiar with the district or the state purchasing requirements handled the applications. We submit that the intent of the competitive bidding requirements were followed and we request an appeal of the decision to recover all funding for this FRN.

Secondly, the attestation audit also found that Zapata CISD did not get board approval for the Southwestern Bell Telephone Company services. Zapata CISD respectfully disagrees with this finding and has included board minutes in which the approval for all purchases was made (Exhibit C and Exhibit D respectively). The date of the board approval was on February 18, 2005 for this month to month contract, and the FCC Form 471 (531511) was filed and certified on March 9, 2009. Both special circumstances listed above are the direct result for the board approval letters not being found during the audit. We contend that had these two circumstances not been in effect, neither of the findings would have occurred.

For the reasons outlined in this document, Zapata CISD believes it has complied with the intent of its obligations to the best of their ability given the situation present at the time pursuant to both 47 C.F.R. § 54.504(a). The SLD’s decision in this case would cause Zapata CISD to be required to reimburse USAC for over \$42,461.40 which would cause undue hardship on the District. Such a result is contrary to the intent of the Telecommunications Act and is a wholly inequitable result. As such, the SLD’s determination of January 05, 2011 should be reversed by the Commission. In the alternative, Zapata CISD seeks a waiver of the Commission’s rules to allow Zapata CISD to retain the funding it received. In this case, granting a waiver would avoid

the inequitable result of forcing the District to reimburse the SLD despite the fact that Zapata CISD made every effort to comply with the Commission's rules and state and/or local requirements.

Sequence of Events and Background:

The C.F.R requires that all eligible schools seek competitive bids pursuant to 47 C.F.R. § 54.404 for all services eligible for support under §§ 54.502 and 54.503, which include Email and Webhosting services. According to the C.F.R., "[t]hese competitive bid requirements apply in addition to state and local competitive bid requirements and are not intended to preempt such state or local requirements." *Id.*, § 54.404(a). The eligible school is required to post a Form 470 to the USAC Administrator (the "Administrator") which is then posted by USAC on its website seeking bids for the services at issue. *Id.*, § 54.404(b). Among other requirements, the District is required to review and evaluate the bids and accept the bid that is the most cost-effective but only after the Form 470 has been posted for at least 28 days. *Id.* Subsequently, an eligible school "shall, upon signing a contract for eligible services, submit a completed FCC Form 471 to the Administrator." 47 C.F.R. § 54.404(c). The "Form 471 shall be signed by the person authorized to order telecommunications and other supported services for the eligible school, library, or consortium and shall include that person's certification under oath" that, among other things, "[t]he entities listed on the FCC Form 471 application have complied with all applicable state and local laws regarding procurement of services for which support is being sought." 47 C.F.R. § 54.404(c)(vi). The certification corresponds with 47 C.F.R. § 54.404(a) statement that the competitive bid requirements apply in addition to state and/or local competitive bid requirements.

REQUEST FOR A WAIVER

In the event that the Commission does not grant Zapata CISD's appeal, the District requests, in the alternative, pursuant to Section 1.3 of the Commission's Rules, that the Commission grant a waiver of its rules to permit Zapata CISD to qualify under the Telecommunications Act. 47 C.F.R § 1.3. For the reasons detailed below, Zapata CISD believes such a waiver is equitable and consistent with the Act as well as prior Commission waivers relating to the filing of FCC Forms 470 and 471.

Section 1.3 provides that the Commission may waive its rules "*if good cause therefore is shown.*" 47 C.F.R § 1.3. Generally, a waiver is appropriate if "*special circumstances warrant deviation from the general rule and such deviation will serve the public interest.*" *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164 (D.C. Cir. 1990);

"6. Generally, the Commission's rules may be waived for good cause shown. The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest. In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. Waiver of the Commission's rules is therefore appropriate only if special circumstances warrant a deviation from the general rule, and such a deviation will serve the public interest."

See also *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969);

"The Commission may waive its rules 'for good cause shown'. To obtain a waiver of the Commission's rules, a waiver proponent must demonstrate either that: (i) the underlying purpose of the rule(s) would not be served or would be frustrated by application to the present case, and that a grant of the waiver would be in the public interest; or (ii) in view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome, or contrary to the public interest, or the applicant has no reasonable alternative. An entity seeking a waiver faces a high hurdle and must plead with particularity the facts and circumstances that warrant a waiver."

A waiver is appropriate here because Zapata CISD complied to the best of their ability with the requirements of the Telecommunications Act and with state and local bidding requirements. In the event the Commission does not agree with the District that it complied with the letter and intent of 47 C.F.R. § 54.404(a), it should waive these rules and reverse the SLD's determination of January 05, 2011.

There is no evidence in the record that Zapata CISD engaged in activity intended to defraud or abuse the E-Rate program. Denying its requests for funding would create undue hardship, not serve the public interest, and prevent it from receiving E-Rate funding for work already performed by Southwestern Bell Company for services that are being used in the District in compliance with program rules. Accordingly, we feel good cause exists to grant Zapata CISD a waiver of section 54.504(a) of the Commission's rules. Additionally, Zapata CISD has put an Internal Control Plan (ICP) into place to keep such occurrences from ever occurring again. This ICP is an internal document that was developed as a result of the Ernst and Young audit that clearly sets forth strategies for all aspects of the E-Rate process with recognizable status, timelines, person responsible, and evidence of action within the document. Clearly, Zapata CISD has met the recommendations that were outcomes of this audit and subsequent report that was filed. We find this a 'best practices' type of document that will be utilized within the district for all future E-Rate activities.

CONCLUSION

Zapata CISD respectfully requests that the Commission reverse the SLD's determination of January 05, 2011 in which it affirmed a previous determination that Zapata CISD's Form 471 filed with respect to its procurement of Telephone services did not comply with TEA procurement policies, and, therefore, should not have been funded. In the alternative, Zapata CISD seeks a waiver as described herein, to allow Zapata CISD to retain the funding it received pursuant to the Funding Commitment Letter issued by the SLD on December 12, 2006.



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Respectfully submitted,

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Enclosures:

ExhibitA_SWB_COMAD.pdf

ExhibitC_BoardMeetingDocumentation.pdf